

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 11th 2011 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlock (US 2,569,743) in view of Miller (US 6,386,197 B1) and Carlock (US 2,672,138).

Regarding claim 2, Carlock '743 discloses a nasal stimulator comprising: a pair of cylinders (Figure 5), said pair of said cylinders being joined to one another by a curved tongue (part at 7 in Figure 5), each of said cylinders including a widening 1 in the central portion of its external portion, said widening covering the periphery of said cylinder. Carlock '743 fails to disclose that each of said cylinders is internally perforated. Miller discloses nasal cylinders with internal perforations 68 for holding medicament to be delivered to a user's lungs (col. 4, lines 63-67). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention and in view of Miller, to have provided perforations in some portion of the interior of the Carlock '743 cylinders in order to deliver a medicament to a user's lungs. Carlock '743 further discloses a peripheral rim (3 or rim formed by frame 7) on a lower part of said cylinder capable of serving as a limit where the insertion of the stimulator into the nose should not pass. Carlock '743 fails to disclose that said widening covers the periphery of said cylinder except in a portion of said cylinder which comes into contact with a nasal septum during use. Carlock '138 discloses a similar widening and discloses that the widening does not cover the periphery of a cylinder which comes into contact with a nasal septum during use (see Figure 2) because this provides greater comfort to a user (col. 3, lines 29-35). It would have been obvious to one of ordinary skill in the art, at the time of the invention and in view of Carlock '138, to have removed the widening of Carlock '743 from the portion which comes into contact with a nasal septum during use in order to provide more comfort to a user. Carlock '743 fails to disclose a protruding support as claimed. Carlock '138 discloses a protruding support 4 extending from a rim and adapted to add

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pressure on the external part of the alar sidewall of the nose, where both the widening of Carlock '138 and the protruding support are capable of producing a gripping effect on the nose alar which stimulates the levator muscle. Carlock '138 discloses that the protruding support are attractive and gently but firmly help hold the cylinders in a nose (col. 2, lines 1-5; col. 3, lines 38-40). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to have provided the Carlock '138 protruding supports in place of the ears 6 (used to hold ribbons etc. - col. 3, lines 31-32 of Carlock '743) in order to better hold the cylinders to a nose and improve the appearance of the device. With this modification, the protruding supports would extend from the rim of Carlock '743.

Response to Arguments

5. Applicant's arguments filed February 2nd 2011 have been fully considered but are either moot in view of the new grounds of rejection or are not persuasive. Applicant has argued that the devices of both Carlock references are frustoconical and not cylinders. Examiner has taken a broader view of the term cylinder given that the exterior of Applicant's device is far from resembling a perfect cylinder. Applicant has argued that the device of both Carlock references would not produce the pressure on an alar sidewall or the gripping effect as claimed. Without addressing whether this would occur when either of the Carlock devices are fully inserted, the claimed effects would occur when Carlock '138 (or Carlock '743 as modified above) is partially inserted so that the

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protruding support and widening are located in the same intended area of the nose as Applicant's.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Thomas McEvoy** whose telephone number is **(571) 270-5034**. The examiner can normally be reached on Monday-Friday, 9:00 am – 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, Tom Hughes at 571-272-4357***. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to

TC3700_Workgroup_D_Inquiries@uspto.gov.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./

Examiner, Art Unit 3731

/S. Thomas Hughes/

Supervisory Patent Examiner, Art Unit 3731